

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Liberty Utilities (CalPeco Electric) LLC
(U 933 E) for Commission Approval of
the Customer Resiliency Program.

Application 22-02-008

DECISION ADOPTING THE PROPOSED SETTLEMENT AGREEMENT**Summary**

This decision grants the joint motion of Liberty Utilities CalPeco Electric LLC and the Public Advocates Office at the California Public Utilities Commission for adoption of a settlement agreement¹ and resolves all issues in the scope of this proceeding. The Settling Parties are the only parties to this proceeding.

This proceeding is closed.

1. Background

Liberty Utilities CalPeco Electric LLC (Liberty) filed its application (Application) for Commission approval of its Customer Resiliency Program (CRP) on February 11, 2022. Liberty seeks approval of its CRP so it can implement reliable back-up power to its vulnerable customers and critical

¹ The settlement agreement is attached to this decision as Appendix A.

stakeholders in the event of a wildfire, Public Safety Power Shutoff (PSPS), major storm, or other event impacting service.²

On March 25, 2022, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) filed a protest to Liberty's Application and Liberty filed a reply to Cal Advocates' protest on April 4, 2022. The assigned Administrative Law Judge (ALJ) held a pre-hearing conference (PHC) on May 24, 2022 and the Assigned Commissioner issued a scoping ruling on June 27, 2022. The parties filed four motions for extending the proceeding schedule on the following respective dates: August 18, 2022; October 21, 2022; January 12, 2023; and March 2, 2023. On May 24, 2023 the parties filed a joint motion to suspend the remaining proceeding schedule, which the assigned ALJ granted on May 26, 2023. On June 16, 2023, Liberty and Cal Advocates (Settling Parties) filed a joint motion for adoption of the all-party settlement (All-Party Settlement) and a joint motion for admission of prepared testimony and exhibits into the evidentiary record. On July 13, 2023, the assigned ALJ granted the joint motion for admission of prepared testimony and exhibits into the evidentiary record.

2. Submission Date

This matter was submitted on July 13, 2023, upon the admission of exhibits into the record and the consequent closure of the record.

3. Issues Before the Commission

We explore the reasonableness of resiliency upgrades in Liberty's CRP components and the cost to ratepayers of these upgrades. Liberty's proposed CRP included three major components: 1) Kings Beach Resiliency Corridor

² See Liberty's Application at 1.

Demonstration Project (Kings Beach), 2) Behind-the-Meter Battery Energy Storage System (BTM BESS) program, and 3) Mobile Diesel Generators.

Additionally, we examine the reasonableness of Liberty's cost recovery and rate-design proposal as well as Liberty's CRP assumptions and estimates for customer participation in the BTM BESS program. Lastly, we examine the CRP's alignment with the Commission's Environmental and Social Justice Action Plan and how the CRP affects environmental and social justice communities.

3.1. Liberty's Proposed Investments for Kings Beach, Including its Kings Beach Resiliency Corridor Demonstration Project

The objective of Liberty's Kings Beach proposal is to identify additional grid-side investments that will foster greater resiliency. Liberty proposed to add select microgrid technologies to optimize its diesel assets and provide resiliency to an estimated 2,600 customers within the designated circuit areas. The total investment for the Kings Beach project is estimated to cost \$2,039,000. This includes the cost of the remote-controlled distribution switch, remote-controlled substation switch, substation-based microgrid controller, and set-up.³ The Settling Parties agree that the Kings Beach project is reasonable as is Liberty's expected total investment of \$2,039,000.⁴

However, the Settling Parties also agree that 1) the long-term use of fossil fueled diesel generators as backup is unsustainable with Liberty's and California's net zero goals,⁵ and 2) Liberty will seek to replace the Kings Beach diesel generators with alternative energy resources that can provide in-territory

³ See Exhibit Liberty-01 at 10-11.

⁴ See Liberty and Cal Advocates' All-Party Settlement Agreement at 3.

⁵ *Ibid.*

reliability services, and retire the diesel generators by 2035, provided that the replacement resources can provide equal or better reliability.⁶ The Settling Parties agree that Cal Advocates retains the right to object to cost recovery of retired resources (if any); and that following the completion of the Kings Beach project, Liberty will recover the actual cost, in rates, of the Kings Beach project in Liberty's next general rate case.⁷ Finally, the Settling Parties agree that the reporting of evaluation metrics requested by Cal Advocates in its testimony should be approved.⁸ Liberty is required to submit annual informational Tier 1 advice letters detailing the reliability improvements related to sectionalizing the Kings Beach Substation and document its progress toward retiring the existing diesel generation.⁹

3.2. Liberty's Behind-the-Meter Battery Energy Storage System (BTM BESS) Program

Liberty proposed to provide Liberty-owned, BTM BESS to Medical Baseline, Critical Facilities, and Large Commercial customers across its service territory. The BTM BESS program would operate for three years, beginning in 2023, during which time participating customers would be enrolled and the BTM BESS installed. Liberty would own, maintain, and operate the storage assets, providing resiliency as a service (RaaS) or back-up power benefits to participating customers during outage events. Non-California Alternate Rates for Energy customers opting to secure this service would pay a monthly RaaS

⁶ *Ibid* at 4.

⁷ *Ibid*.

⁸ See Exhibit CalAdv-01 at 1.

⁹ See Liberty and Cal Advocates' All-Party Settlement Agreement at 5.

payment that would be added to their monthly electric service bills, dependent on their customer status.¹⁰

Cal Advocates opposed Liberty's BTM BESS proposal.¹¹ As part of the settlement negotiations to resolve other issues in the Application, the Settling Parties agreed that Liberty will withdraw its BTM BESS program proposal from the Application.¹² Because the BTM BESS proposal was withdrawn, the record has not been sufficiently developed and therefore the Commission will not make a determination at this time on the program's enrollment prospects or whether Liberty's proposed battery storage capacities were sufficient for providing resiliency.

3.3. Liberty's Mobile Diesel Generator Program and Liberty's Expected Coordination with Air Quality Management Regulators

Since Liberty operates in an area that has previously been affected by wildfires and is vulnerable to future wildfires, Liberty proposed to reinforce its resilience to possible fire events through purchasing mobile diesel generators that will be used solely when needed during long-term outages or other emergencies. These mobile diesel generators would not be used for any other purpose (*e.g.*, to provide resource adequacy or as a capacity product).¹³ Liberty would retire the two mobile generators by 2035, and if a preferable alternative becomes available in the market sooner than 2035, Liberty would retire the generators sooner than 2035.¹⁴

¹⁰ See Liberty Exhibit-01 at 2-7.

¹¹ See Protest of the Public Advocates Office at 2-3, filed March 25, 2022.

¹² See Liberty and Cal Advocates' All-Party Settlement Agreement at 4.

¹³ See Liberty and Cal Advocates' All-Party Settlement Agreement at 5.

¹⁴ *Ibid.*

Cal Advocates initially opposed Liberty's request to purchase diesel generators under the Mobile Diesel Generator Program, recommending the Commission to direct Liberty to continue renting diesel generators during fire season.¹⁵ Cal Advocates and Liberty engaged in negotiations where Liberty has submitted numerous responses to Cal Advocates' data requests. As a result of the negotiations, Cal Advocates has agreed that Liberty has shown the purchase of two mobile diesel generators for emergency services at a price of \$1,988,630¹⁶ per generator (including tax) would save ratepayer funds as compared to annually renting these generators.¹⁷ Liberty shall continue coordination and compliance with all applicable California air quality management regulations when operating the Mobile Diesel Generator Program.

3.4. Liberty's Assumptions and Estimates for Customer Participation in the Customer Resiliency Program and Liberty's Cost Recovery and Rate Design Proposal

The Settling Parties have engaged in negotiations where Liberty has submitted numerous responses to Cal Advocates' data requests. As a result of these negotiations, the Settling Parties have come to agree on the reasonableness of Liberty's proposed Kings Beach investments and purchasing mobile diesel generators in the Mobile Diesel Generator Program. Collectively, these two components make up the CRP¹⁸ and the Settling Parties have agreed on the reasonableness of the expenditures, as well as the reasonableness of Liberty's

¹⁵ See Exhibit CalAdv-01 at 3.

¹⁶ See Exhibit Liberty-06: Price quote for mobile diesel generators.

¹⁷ See Exhibit Liberty-07: Final, updated discounted cash flow analysis for mobile diesel generators using Exhibit Liberty-06 price quote.

¹⁸ After withdrawing its BTM BESS proposal, Liberty's proposed Customer Resiliency Program comprises of only the Kings Beach and Mobile Diesel Generator Programs.

cost recovery for these two components, and therefore the CRP as a whole.¹⁹ Cal Advocates questioned Liberty's assumptions and estimates for customer participation in the BTM BESS proposal,²⁰ but not the other components of the CRP. Since the Settling Parties have agreed on the reasonableness of the CRP and subsequent cost recovery, the Commission will also presume that Liberty's assumptions and estimates for customer participation in the CRP (not including the BTM BESS proposal) are reasonable.

Liberty has not provided detailed rate design proposals in the record for Kings Beach and the Mobile Diesel Generator Program. The majority of rate design analysis was done for the BTM BESS proposal,²¹ therefore the Commission did not find enough information in the record to determine if the rate design proposal for Liberty's CRP is reasonable. Liberty shall provide its rate design proposal for its CRP in its next general rate case application.

3.5. Alignment with the Commission's Environmental and Social Justice Action Plan (ESJAP) and How the CRP Affects Environmental and Social Justice Communities

The Settling Parties disagreed on whether the proposed CRP aligned with the Commission's Environmental and Social Justice (ESJ) Action Plan goals. Cal Advocates argued that Liberty's proposed CRP fails to achieve all nine goals of the Commission's Environmental and Social Justice Action Plan (ESJAP),²² while Liberty stated that its CRP portfolio will "align with and will positively impact

¹⁹ See All-Party Settlement Agreement at 4-7.

²⁰ See Exhibit CalAdv-01 at 20-24.

²¹ See Application of Liberty Utilities (CalPeco Electric) LLC (U 933 E) for Commission Approval of the Customer Resiliency Program at 5-8.

²² See Exhibit CalAdv-01 at 28.

the Environmental and Social Justice (ESJ) communities,” and will specifically help advance goals 2 and 4 of the ESJAP.^{23,24}

There are no Disadvantaged Communities (DACs) as defined in the Commission’s ESJAP²⁵ in Liberty’s territory.²⁶ However, Liberty points out that there are “some customers who are considered low-income households on an individual-customer basis. While the communities as a whole and the census tracts therein are not classified as DACs, Truckee, South Lake Tahoe, and other rural communities served by Liberty have a number of low-income households.”²⁷ These areas are potentially ESJ communities even if they are not classified as DACs, and it is still relevant to consider the impact on these communities and general alignment with the goals of the ESJAP.

As proposed by the All-Party Settlement, the withdrawal of the BTM BESS proposal needs to strengthen alignment with the goals of the ESJAP, especially with respect to Goal 2: “Increasing investment in clean energy resources to

²³ See Environmental and Social Justice Action Plan 2.0, April 7, 2022. California Public Utilities Commission. Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>

Goal 2 of the Commission’s ESJ Action Plan is to “Increase investment in clean energy resources to benefit ESJ communities, especially to improve local air quality and public health.”

Goal 4 of the Commission’s ESJ Action Plan is to “Increase climate resiliency in ESJ communities.”

²⁴ See Exhibit Liberty-02 - Supplemental Testimony of Liberty Utilities on the CPUC Environmental and Social Justice Action Plan at 4-5.

²⁵ The Commission’s ESJ Action Plan defines ESJ Communities broadly as those which are (i) predominately communities of color or low-income, (ii) underrepresented in the Commission’s policy and/or decision making process, (iii) subject to a disproportionate impact from environmental hazards, or (iv) likely to experience disparate implementation of environmental regulations and socioeconomic investments in their communities. See ESJ Action Plan, at 1.

²⁶ See Liberty-02 at 2.

²⁷ *Ibid* at 3.

benefit ESJ communities, especially to improve local air quality and public health.” Although the Commission recognizes that the BTM BESS program has cost effectiveness issues and may not be fully ready for deployment at this time, the Commission encourages Liberty and Cal Advocates to work closely in the future to retool any non-fossil based resiliency programs when there are issues of concern, to better align with the ESJAP goals and with California’s clean energy goals.

The Commission strongly encourages both Liberty and Cal Advocates to increase alignment with the ESJAP goals, especially increasing investment in clean energy resources to benefit ESJ communities, when designing and reviewing programs and proposals in the future.

4. Commission Review of the Proposed Settlement Agreement

In order to determine if the All-Party Settlement should be approved in whole, approved in part, or rejected, this decision must analyze the All-Party Settlement in accordance with Article 12 of the Commission’s Rules of Practice and Procedure (Rules). The Commission has long favored the settlement of disputes. Pursuant to Rule 12.1(d), the Commission will not approve a settlement unless it is found to be reasonable in light of the whole record, consistent with law, and in the public interest. This standard applies to settlements that are contested as well as uncontested. The All-Party Settlement is uncontested.

4.1. Reasonableness in Light of the Whole Record

The motion to adopt the All-Party Settlement claimed that it was reasonable in light of the whole record as its outcomes fall within the range of positions and outcomes presented by the parties. The comparison exhibit²⁸

²⁸ See All-Party Settlement Agreement at B-1-B4.

attached to the motion shows that parties had differing views on elements of the BTM BESS and Mobile Diesel Generator Programs. These issues were resolved through the All-Party Settlement. This decision agrees that the modifications to party positions reached through the settlement process resulted in a reasonable outcome for all three components of the CRP.

First, requiring reporting of evaluation metrics for the Kings Beach proposal as requested by Cal Advocates would provide ratepayers with more transparency and accountability for this project. The parties also agreed that the long-term use of fossil fueled diesel generators as backup is unsustainable with Liberty's and California's net zero goals and that Liberty will seek to replace the Kings Beach diesel generators with alternative energy resources that can provide equal or better reliability by 2035.

Secondly, withdrawing Liberty's proposed BTM BESS Project was reasonable in light of the whole record as the outcome adopted by the All-Party Settlement matches the original outcome proposed by one of the Settling Parties (in this case Cal Advocates).

Lastly, the Settling Parties settled their disputes on the Mobile Diesel Generator Program. Cal Advocates agrees that Liberty has shown that the purchase of two mobile diesel generators for emergency services, at a price, including tax, of \$1,988,630 per generator, would save ratepayer funds when compared to annually renting these generators.²⁹ Liberty and Cal Advocates also agreed that the two mobile generators would be used solely when needed during long-term outages or other emergencies and shall not be used for any other purpose (*e.g.*, to provide resource adequacy or as a capacity product) and that

²⁹ See All-Party Settlement Agreement at B-4.

Liberty will retire the two mobile generators by 2035.³⁰ If a preferable alternative becomes available in the market sooner than 2035, then Liberty will retire the generators sooner as well. The Settling Parties also agreed that Liberty shall not include any part of the purchase price of the mobile diesel generators in the rate base after the retirement of the units, and that Liberty will refund ratepayers the salvage value of the retired units after retiring them.³¹

Given that the All-Party Settlement adopts positions that represent compromises of litigated positions on the record, this decision finds that the All-Party Settlement is reasonable in light of the whole record.

4.2. Consistency with the Law

The motion to adopt the All-Party Settlement avers that it is fully consistent with relevant statutes, prior Commission decisions, and public policy, including Public Utilities Code Section 451, which requires that utility rates be just and reasonable. No issues were raised that were inconsistent with the law and the utility rates discussed in the settlement are presumed to be just and reasonable in light of the whole record, as there were no remaining disputes between the parties.

4.3. In the Public Interest

Finally, this decision must explore whether the All-Party Settlement is in the public interest. Critically, this decision must determine whether the public interest in the CRP program justifies the estimated expenditure of \$6,016,259 in ratepayer funds (\$2,039,000 in the Kings Beach Resiliency Corridor Proposal and up to \$3,977,259 for two mobile generators).³²

³⁰ *Ibid.*

³¹ *Ibid.*

³² See All-Party Settlement Agreement at B-1 - B-3.

The Commission agrees with the parties that this decision is in the public interest. The Kings Beach project would allow greater resiliency by adding select microgrid technologies to optimize its diesel assets, providing increased resiliency to an estimated 2,600 customers within the designated circuit areas. The Settling Parties also increased transparency and accountability by requiring Liberty to report evaluation metrics detailing the reliability improvements related to sectionalizing the Kings Beach Substation and documenting Liberty's progress toward retiring the existing diesel generation by 2035 (or earlier, provided the replacement resources can provide equal or better reliability).³³

The cost savings to ratepayers from Liberty's Mobile Diesel Generator Program can be seen from comparing Liberty's price quotation³⁴ showing the purchase price of two mobile diesel generators compared to annually leasing the generators on an as-needed schedule.³⁵ Furthermore, the Settling Parties address environmental concerns by limiting the use of the mobile diesel generators solely to long-term outages or other emergencies.³⁶ These mobile diesel generators shall not be used for any other purpose (e.g., to provide resource adequacy or as a capacity product).³⁷ Liberty has agreed to retire the two mobile diesel generators by 2035, and if a preferable alternative becomes available in the market sooner than 2035, Liberty will retire the generators sooner than 2035.³⁸

³³ See All-Party Settlement Agreement at B-1.

³⁴ See Exhibit Liberty-06: Price quote for mobile diesel generators.

³⁵ See Exhibit Liberty-07: Final, updated discounted cash flow analysis for mobile diesel generators using Exhibit Liberty-06 price quote.

³⁶ See Joint Motion of Liberty and Cal Advocates for Adoption of the All-Party Settlement Agreement at 7.

³⁷ See All-Party Settlement Agreement at 5.

³⁸ *Ibid.*

5. Conclusion

The All-Party Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. The All-Party Settlement should be adopted in its entirety.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, as provided in Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day public review and comment period for this decision is waived.

7. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Syche Cai and Colin Rizzo are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. Liberty and Cal Advocates filed a joint motion to adopt the All-Party Settlement in this proceeding on June 16, 2023.
2. Liberty's expected total investment of \$2,039,000 (in 2021 dollars) for the Kings Beach Project is reasonable since this project will foster greater resiliency and optimize Liberty's diesel assets by integrating microgrid technologies for an estimated 2,600 customers.
3. The long-term use of fossil-fueled diesel generators as backup power is unsustainable with Liberty's and California's net zero goals and Liberty will seek to replace the Kings Beach diesel generators with alternative energy resources that can provide in-territory reliability services.
4. The Behind-the-Meter Battery Energy Storage System proposal and all associated elements of the Behind-the-Meter Battery Energy Storage System proposal are withdrawn from the Application.

5. The purchase of two mobile diesel generators for emergency services, at a price, including tax, of \$1,988,630 per generator, would save ratepayer funds as compared to take-or-pay reservation of those generators under rental agreements that would be expensed annually.

6. Liberty has not provided detailed rate design proposals in the record for Kings Beach and the Mobile Diesel Generator Program.

Conclusions of Law

1. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable considering the whole record, consistent with law, and in the public interest.

2. The existing diesel generation at the Kings Beach Project should be retired by 2035 provided the replacement resources can provide equal or better reliability.

3. Following the completion of the Kings Beach Project, Liberty should recover, in rates, the actual cost of the Kings Beach Resiliency Corridor Demonstration Project in its next general rate case.

4. For the Mobile Diesel Generator Program, Liberty should be permitted to purchase, for a total price, including tax, of up to \$3,977,259 for two mobile generators for emergency operations only.

5. The Commission did not find enough information in the record to determine if the rate design proposal for Liberty's Customer Resiliency Program is reasonable.

6. Liberty should be allowed to seek recovery of the excess purchase price and any other related costs in Liberty's next general rate case, subject to a reasonableness review in the general rate case.

7. The Commission strongly encourages both Liberty and Cal Advocates to increase alignment with the Commission's Environmental and Social Justice Action Plan goals, especially increasing investment in clean energy resources to benefit ESJ communities, when designing and reviewing programs and proposals in the future.

8. The proposed All-Party Settlement is reasonable considering the record because its outcomes fall within the range of the parties' litigated positions.

9. The All-Party Settlement is consistent with the law.

10. The All-Party Settlement is in the public interest.

11. Adoption of the All-Party Settlement is binding on all parties to the proceeding. However, pursuant to Rule 12.5, the settlement does not bind or otherwise impose a precedent in this or any future proceeding.

12. The Motion to adopt the All-Party Settlement should be adopted.

13. All rulings issued by the assigned Commissioner and ALJ should be affirmed herein; and all motions not specifically addressed herein or previously addressed by the assigned Commissioner or ALJ, should be denied.

14. Application 22-02-008 should be closed.

O R D E R

IT IS ORDERED that:

1. The joint motion filed by Liberty Utilities CalPeco Electric LLC and the Public Advocates Office of the California Public Utilities Commission dated June 16, 2023, for the adoption of the All-Party Settlement, is granted. The All-Party Settlement is attached as Appendix 1 and incorporated herein by this reference.

2. Liberty Utilities CalPeco Electric LLC shall apply the terms of the All-Party Settlement as soon as practicable.

3. Liberty Utilities CalPeco Electric LLC shall provide its rate design proposal for its Customer Resiliency Program in its next general rate case application.

4. Application 22-02-008 is closed.

This order is effective today.

Dated _____, at Sacramento, California.

APPENDIX 1